

## AFFIDAVIT

Julia A. Cowley, Special Agent, Federal Bureau of Investigation (“FBI”), being duly sworn, states:

1. I have been a Special Agent of the FBI for over 9½ years and have been assigned to the Public Corruption/Civil Rights Squad of the Boston office of the FBI since 2002. In this assignment, I have been involved in the investigation of civil rights offenses which are violations of federal statutes within the jurisdiction of the FBI. I personally participated in the investigation of violations of federal law by **JAMES “JIM” BURKE** set forth in this affidavit.
2. This affidavit is submitted in support of a criminal complaint charging **JAMES “JIM” BURKE (“BURKE”)** with one count of deprivation of rights under the color of law in violation of Title 18, United States Code, Section 242 and one count of attempted deprivation of rights under the color of law in violation of Title 18, United States Code, Section 242.
3. This affidavit summarizes a portion of an investigation into the criminal activities of **BURKE**. Since this affidavit is being submitted for the limited purpose of establishing probable cause to believe that **BURKE** committed violations of Title 18, United States Code, Section 242, I have not included each and every fact known to me concerning this investigation. The foregoing facts are based on my personal participation in this investigation and from a review of information provided to me by individuals associated with this investigation. A substantial portion of the evidence in this affidavit is based on consensual surreptitious recordings.

**IDENTIFICATION OF JAMES “JIM” BURKE**

4. As set forth below, on December 8, 2008, information was provided to the FBI indicating that a clerk named “**JIM**” at the Chelsea District Court was involved in criminal offenses which are violations of federal statutes within the jurisdiction of the FBI. A check of the Massachusetts Court System website listed **JAMES BURKE** as a Clerk in the Chelsea District Court located at 120 Broadway, Chelsea, Massachusetts. A database check listed the address 120 Broadway, Chelsea, Massachusetts, as an address associated with **JAMES M. BURKE**, date of birth of March 8, 1967.

**PHONE CALL FROM ATTORNEY JOHN SWOMELY**

5. On December 8, 2008, attorney John Swomley contacted the FBI and reported that a client, who later became a cooperating witness (“CW”), had been in Chelsea District Court with Attorney Swomley’s associate, attorney Danielle Andreasi, trying to get a prostitution charge dismissed. According to Attorney Swomley, while they were in court, the CW pointed out the clerk and told Attorney Andreasi that she had provided the clerk oral sex in the court.

**INTERVIEW OF ATTORNEY DANIELLE ANDREASI**

6. On December 8, 2008, the FBI interviewed Attorney Andreasi. Attorney Andreasi related that earlier that day she was in Chelsea District Court with the CW trying to get an open prostitution case dismissed. While in court, the CW pointed out one of the clerks and told Attorney Andreasi “I

blew him in court.” The CW referred to the clerk as “**JIM**” (**BURKE**). The CW waved to **BURKE**. During a break, **BURKE** motioned the CW into a private room. The room had a window and Attorney Andreasi could see the CW and **BURKE** talking and laughing. Afterwards, the CW told Attorney Andreasi that **BURKE** said that the judge was his friend and “had his back.” The CW said that **BURKE** told her that he (**BURKE**) would help her if she helped him, which she understood to be a request for sexual favors. The CW also told Attorney Andreasi that **BURKE** entered his phone number into the CW’s cell phone.

7. After Attorney Andreasi and the CW left Chelsea District Court they stopped for lunch. After lunch the CW’s cell phone rang. The CW told Attorney Andreasi that the caller was **BURKE** and put **BURKE** on speaker-phone. The CW asked **BURKE** something to the effect “why did you want to do all this stuff?” **BURKE** said “shhh” and told the CW that he would call her back later.

#### **INTERVIEW OF CW**

8. **February 2005:** On December 8, 2008, the FBI interviewed the CW. The CW advised that approximately two or three years ago she was arrested for prostitution. A review of the CW’s criminal history shows that she was arrested for prostitution and brought to Chelsea District Court on or about February 9, 2005. At that time, while in lock-up at Chelsea District Court, one of the clerks that the CW knew as “**JIM**” (**BURKE**) asked her if she was a “working girl” and told her that he would help her

out if she helped him out. **BURKE** took the CW out of the cell and into another room. The CW gave **BURKE** oral sex and he touched and sucked her breasts. The CW saw **BURKE** again after being arrested on another prostitution charge on or about October 3, 2006. At that time, while CW was in lock-up, **BURKE** told her that he would bail her out, but **BURKE** did not come back to get the CW. That was the last time the CW saw **BURKE** until she saw him again on December 8, 2008.

9. **Contact with BURKE on December 8, 2008:** On December 8, 2008, the CW was in Chelsea District Court with attorney Danielle Attorney Andreasi, trying to get a prostitution case cleared. The CW saw **BURKE** in the courtroom and waved to him. **BURKE** tried to ignore the CW. However, during a break, **BURKE** waved to the CW and took her to a conference room. While in the conference room, **BURKE** told the CW that he would help her out if she helped him out. **BURKE** said that he would talk to the judge. **BURKE** told the CW that they could go downstairs and sit on a bench. **BURKE** said that he wanted to see CW's breasts and "eat her out." The CW told **BURKE** that she was a different person from two years ago. **BURKE** then took the CW's cell phone and put his phone number into her phone.

#### **PHONE CALL BETWEEN BURKE AND CW**

10. **BURKE talks to District Attorney:** At the direction of the FBI, on December 8, 2008, the CW had a telephone conversation with **BURKE**. The conversation was surreptitiously audio recorded. In reference to

**BURKE's** earlier suggestion that they (CW and **BURKE**) go to the downstairs area of the court, the CW told **BURKE** that she could not believe that he (**BURKE**) would say "that." **BURKE** then repeated that he wanted to and said that the CW looked good. The CW told **BURKE** that she would have gone downstairs with **BURKE** because she was scared about her case. The CW indicated to **BURKE** that she knew that he had helped her out "last time" and that she would be willing to "take care" of him if he helped her out again. **BURKE** said that he had talked to the District Attorney who told **BURKE** that the CW's case was going to get resolved. **BURKE** also told the CW that there was always some place to go and that, if he had to, he would take the CW to his office.

11. **BURKE Confirms Previous Meeting with CW:** During their recorded telephone conversation on December 8, 2008, **BURKE** and the CW discussed their previous sexual encounter in the Chelsea District Court. **BURKE** told CW that the only way they were able to have a sexual encounter was because it was late in the day and the only judge left was not going to go downstairs. Later in the conversation the CW commented that she was embarrassed that she and **BURKE** had a sexual encounter in the "court room." **BURKE** asked the CW if she thought it was "hot" and the CW replied that it was "totally hot" and "freaky." **BURKE** agreed that it was freaky and said "it's good because it's like it's so bad."

12. **BURKE'S Actions With Someone Else:** In their December 8, 2008 conversation, **BURKE** told the CW that there was another room downstairs and that he had been with "someone else down there" and that it was "just hookin' up." **BURKE** said that the individual "opened their mouth and I fuckin' wanted to fuckin' cut their head off." The CW understood this to mean that the other person had told someone about her encounter with **BURKE**.
13. **BURKE Asks If He Is Being Set Up:** During the conversation, **BURKE** expressed to the CW concern that he was being set up and that their conversation was being recorded. The CW told **BURKE** that he was paranoid and **BURKE** agreed. **BURKE** stated that he was paranoid because he "got burned before." **BURKE** was alluding to the incident outlined in Paragraph 12 above.

**VOICE-MAIL MESSAGES FROM BURKE:**

14. Between December 8, 2008 and December 10, 2008, **BURKE** placed several phone calls to the CW's cell phone. **BURKE** left six (6) voice-mail messages for the CW. In one message, **BURKE** told the CW that he had news for her.

**CW MEETS WITH BURKE IN THE CHELSEA DISTRICT COURT**

15. On or about December 18, 2008, the CW met with **BURKE** in a private room located in the Chelsea District Court. The meeting was surreptitiously audio recorded. **BURKE** and the CW discussed playing phone tag and how the CW is always busy. The CW then asked **BURKE** if she was going to jail, and **BURKE** replied that he did not think so.

**BURKE** said the CW was “all set” and that she got off too easy. The CW then told **BURKE** that he did not get what he needed, and **BURKE** told CW that they were going to “do it right now.” The CW responded that they could not do it right there. The CW asked **BURKE** again if she was going to jail **BURKE** replied “nope.” **BURKE** told the CW that he talked to “them” and “that’s what they told me unless their boss says no, she has to go to jail.” **BURKE** then told CW not to “tell your lawyer that you spoke to me and that I spoke to anybody.”

16. Based on the information set out above, I believe probable cause exists to conclude that on or about February 9, 2005, **BURKE** violated 18 U.S.C. § 242.

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Julia A. Cowley  
Special Agent  
Federal Bureau of Investigation

Subscribed and sworn to before me on this \_\_\_\_ day of February, 2009.

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Timothy S. Hillman  
United States Magistrate Judge